

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

SHIRLEY STUCKEY, as mother and
natural guardian of TANYA WILKINS
and as personal representative of
the wrongful death beneficiaries of
CHARLIE JONES, deceased; and
T.H. SCIPPER, as the administrator
of the estate of BOBBY GATES, deceased
Plaintiffs

V.

NO. 2:96CV47-B-B

ILLINOIS CENTRAL RAILROAD COMPANY, and
NATIONAL RAILROAD PASSENGER CORPORATION
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the defendants' motion for summary judgment and the plaintiffs' motion to withdraw stipulation. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

This case involves a collision between an automobile driven by Charlie Jones and an Amtrak (defendant National Railroad Passenger Corporation) train. The collision occurred on February 3, 1996, at approximately 12:45 p.m., at a railroad crossing in Quitman County, Mississippi. Bobby Gates was a passenger in Jones' automobile. Both Jones and Gates died on the scene as a result of the collision. On the date of the accident, the weather was clear and sunny, but it was bitterly cold and there was 2-3 inches of ice and snow on the road.

The railroad crossing was located in a rural area, and was marked with both a crossbuck and a stop sign. The tracks were elevated. Just prior to the collision, the decedents were travelling southbound, on a road that ran parallel to the tracks. The train was likewise travelling southbound. To cross the tracks, the decedents had to make an approximately 90 degree turn toward the west. After turning west, there is a short incline leading up to the crossing. Exactly what transpired as the decedents approached the crossing is not clear, but we do know that the decedents' automobile was on the tracks when the train reached the intersection.

The decedents' beneficiaries have filed suit for wrongful death against Illinois Central Railroad, which owned and maintained the tracks, and National Railroad Passenger Corporation, which operated the train. The defendants have moved for summary judgment.

LAW

A. Motion to Withdraw Stipulation

As referenced in the letter dated September 3, 1997, from Glen Beckham, counsel for the defendants, to Robert Roy, counsel for the Gates plaintiffs, with a copy to Sherry Fernandez, counsel for the Jones plaintiffs, the parties reached the following stipulation:

Mr. Scipper, Chancery Clerk of Quitman County has been advised by the Mississippi DOT that the federal funds are available for Quitman County to be reimbursed for its expenditures on the stop signs installed at crossings in Quitman County including the stop signs at the crossing which is the subject of this accident, all as discussed in the depositions of Scipper and Clark; that Scipper has simply not sent the necessary paperwork to the MDOT; and that Scipper intends to do so as soon as his busy schedule permits, and that under these circumstances the Court in this case may assume that payment for these stop signs including those stop signs at the subject crossing have been paid for by the MDOT through the use of federal funds.

The plaintiffs now move to withdraw said stipulation on the ground that it is not supported by the actual facts of this case in that no federal funds were expended for the purchase of warning signs at the subject crossing.

In the summer of 1995, the MDOT sent a letter to all counties in North Mississippi inquiring as to whether or not they would be interested in installing stop signs at railroad crossings if the MDOT paid for the signs through the use of federal funds. Quitman County advised the MDOT that it would participate, and stop signs were subsequently installed at the subject crossing in the year 1995. The accident at issue occurred in February of 1996. Thereafter, counsel for the defendant began to make inquiries and requests to Robert Roy (counsel for the Gates plaintiffs and also the attorney for the Quitman County Board of Supervisors) concerning payment for the stop signs by the MDOT through the use of federal funds. Correspondence reflecting such inquiries and requests begins as early as July of 1996. On April 21, 1997, T.H. Scipper, representative of the Gates estate and chancery clerk for Quitman County, states in his deposition that he had not sought reimbursement from the MDOT because he had been too busy to do so. Scipper asserted that the failure to seek reimbursement had been a mere oversight on his part. Counsel for the defendants continued to make inquiries regarding reimbursement for the stop signs, until the parties finally reached the aforementioned stipulation.

In support of their motion to withdraw stipulation, the plaintiffs submit the affidavit of Scipper which states that on June 11, 1997, he made a request on behalf of Quitman County for reimbursement of the cost of the signs installed at railroad crossings in Quitman County pursuant to the 1995 letter from the MDOT. Scipper states that on August 6, 1997, he received a letter from the State Rail Engineer stating that the MDOT could not make payment because the county had not executed an agreement furnished by the MDOT. Scipper then states that, after submitting the executed agreement, he received a call from the State Rail Engineer, followed by a confirming written memorandum, notifying him that the Federal Highway Administration would not allow the MDOT to reimburse Quitman County for the incurred costs.

Whether or not federal funds were used to purchase the stop signs at the subject crossing is a key issue in the resolution of the inadequate signalization claim presented by the plaintiffs. The defendants assert that the court should not countenance the conduct of Scipper, representative of the Gates estate, in that it is Scipper's own lack of diligence in fulfilling his duties of office that have caused the federal funds not to be received. The court concurs. Federal funds were knowingly available for the installation of stop signs at the subject crossing. The signs were installed in contemplation of the receipt of federal funds and the oversight of Scipper does not vitiate the idea of federal preemption. The signs were installed only because of the presence of the federal funds. The court will not decide the issue of Scipper's motives, but since federal funds were available and initiated the decision to install the signs, the court will consider the motion for summary judgment as if federal funds had been received by the county in response to a timely request for reimbursement. Accordingly, the court finds that the plaintiffs' motion to withdraw stipulation should be denied.

B. Motion for Summary Judgment

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

1. Claims Against Illinois Central Railroad

The plaintiffs' complaint asserts in general terms that the defendant Illinois Central Railroad was negligent in that the subject crossing was extrahazardous, lacked appropriate warning signals, and was not properly maintained. However, in response to the defendants' motion for summary judgment, the plaintiffs assert only two theories of liability against Illinois Central--the crossing was extrahazardous and the crossing lacked adequate signalization. Since these are the only claims for which the plaintiffs present any argument or evidence, the court will presume that the plaintiffs do not wish to pursue any other claims against the defendant Illinois Central.

The plaintiffs assert that the crossing lacked adequate warning signals, stating that the crossing should have had active warning devices such as flashing lights and gates rather than passive warning devices like crossbucks and stop signs. Miss. Code Ann. § 77-9-247 requires railroad companies to erect and maintain a standard "railroad crossbuck" at each railroad crossing in the state of Mississippi. Railroad companies may also be required to install additional warning devices at the direction of the MDOT. Miss. Code Ann. § 65-1-175. The plaintiffs have presented no evidence of any failure by the defendant Illinois Central to comply with the

requirements of either § 77-9-247 or the MDOT.

The Mississippi Supreme Court addressed the issue of inadequate signalization in Wilner v. Mississippi Export R.R. Co., 546 So. 2d 678 (Miss. 1989). In Wilner, the plaintiff collided with a train on a dark, foggy morning, before daylight. The crossing where the collision occurred utilized only passive warning devices to alert motorists of the presence of a railroad crossing. The plaintiff's expert testified that the crossing was extra hazardous in foggy conditions due to a lack of active warning devices.

In considering the plaintiff's claim of inadequate signalization, the Mississippi Supreme Court stated:

The opinion of the expert that the crossing was extra hazardous does not end the inquiry. Every railroad crossing can be extra hazardous, and is potentially dangerous....

The question is whether the defendant railroad, considering the danger of the crossing, should have in the exercise of reasonable care placed more or different warnings than it did? By clear, unmistakable signs and language there was a warning of a crossing. The railroad was entitled to assume that approaching motor vehicle drivers would upon seeing the signs slow sufficiently to see whether or not a train was on or near the crossing.

Wilner, 546 So. 2d at 681-682. The Mississippi Supreme Court pointed out that the defendant had complied with § 77-9-247 by erecting a railroad crossbuck, and that nothing about the crossing made it deceptively dangerous, or any more dangerous than the hundreds of other railroad crossings in the state. Therefore, the Mississippi Supreme Court held that the trial court should have directed a verdict for the defendant on the issue of inadequate signalization.

This court finds the decision in Wilner to be dispositive of this issue. The plaintiffs have failed to present any evidence from which a reasonable person could find that the crossing was inadequately signalized. There were clear, unmistakable signs warning the plaintiff of the

presence of the railroad tracks. Furthermore, the tracks were elevated, straight, and clear of brush and weeds, thus allowing for an unimpaired view of any oncoming trains. With clear, unmistakable warning signs and an unimpeded view of the tracks, the railroad should be entitled to assume that motorists will exercise reasonable care to determine if a train is approaching the crossing by slowing down and looking both ways (or stopping in the presence of a stop sign) before proceeding across the tracks.

The plaintiffs assert that their expert witness will state that this crossing is extrahazardous due to the fact that the road travelled by the decedents runs parallel to the tracks just prior to the crossing, and that a southbound train overtakes a southbound automobile from the rear, making it extremely difficult for the driver of the automobile to see the approaching train. However, the court finds that, like the crossing in Wilner, this crossing is no more hazardous or dangerous than any other crossing in this state. From the photographic evidence presented by the defendants, it is clear that at the point of the crossing, the road and the tracks are perpendicular to one another. Thus, a driver approaching the intersection need not look into a mirror or through his rear window to observe an approaching train. Passive warning devices should have beffs may not maintain a claim for inadequate signalization.

Furthermore, even if the court were to find that the subject crossing was extrahazardous, the plaintiffs' claim for inadequate signalization is preempted by the Federal Rail Safety Act. The preeminent case on Federal Rail Safety Act preemption is CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 123 L. Ed. 2d 387 (1993), in which the United States Supreme Court stated that applicable federal regulations may preempt any state law, rule, regulation, or standard relating to railroad safety. Id., 507 U.S. at 664, 123 L. Ed. 2d at 396-397. Legal duties imposed upon railroads by virtue of state common law fall within the scope of preemption. Id. According to

the Supreme Court in Easterwood, claims for inadequate signalization are preempted by federal law if federal funds have been expended to install, upgrade, or repair the signalization at the crossing in question. Easterwood, 507 U.S. at 670-671, 123 L. Ed. 2d at 400-401. The parties have stipulated that the court may assume that the installation of the stop signs at the subject crossing have been paid for by the MDOT through the use of federal funds. Therefore, any claim the plaintiffs may wish to assert for inadequate signalization is preempted by federal law.

2. Claims Against Amtrak

The plaintiffs assert that the defendant Amtrak failed to use reasonable care in the operation of its train, by operating its train at an excessive speed for the icy conditions, and by failing to sound a horn or whistle, or ring its bell, repeatedly or continuously, while approaching the crossing.

The undisputed evidence reveals that the train was travelling 68-69 m.p.h.--well within the 80 m.p.h. speed limit set for that particular portion of track. Claims for excessive speed are preempted if the train is indisputably travelling within the federal speed limit set for that particular class of track. Easterwood, 507 U.S. 658, 673-675, 123 L. Ed. 2d 387, 402-404 (1993); see also Wright v. Illinois Cent. R.R. Co., 868 F. Supp. 183, 186-187 (S.D. Miss. 1994). Since the plaintiff's train was indisputably travelling within the 80 m.p.h. speed limit set by federal regulations, the court finds that any claim the plaintiffs may wish to assert for excessive speed is preempted by federal law.

The plaintiffs contend that Easterwood only preempts bare claims of excessive speed, and that claims of excessive speed in conjunction with a breach of a related tort law duty, such as a duty to slow or stop a train to avoid a specific individual hazard, are not preempted by federal law. Easterwood, 123 L. Ed. 2d at 404, n. 15. The plaintiffs assert that the icy conditions of the roadway and crossing constituted just such a specific individual hazard. The court disagrees. There was nothing specific or individual about the icy conditions on the day of the accident. The icy conditions were not limited to the subject crossing, but were prevalent throughout North Mississippi on that date. Conditions which can and do occur at many intersections are not the specific individual hazards contemplated by the court in Easterwood in creating an exception to preemption. Earwood v. Norfolk S. Ry., 845 F. Supp. 880, 888 (N.D. Ga. 1993). The plaintiffs

cite no cases in which snow and ice constituted a specific individual hazard, thus negating the preemption of excessive speed claims. The court will decline to create such an exception in this case.

The engineer and assistant engineer have both stated under oath that the train whistle was properly sounded as they approached the crossing. An independent third-party who was travelling in an automobile immediately behind the plaintiff testified likewise. Furthermore, the event recorder from the lead locomotive indicates that the train's horn was sounding on at least five occasions within the twenty-five seconds prior to the application of the train's emergency brakes.

In an effort to refute the defendants' evidence that the train gave a proper audible warning, the plaintiffs submit the affidavits of J.W. Jenkins and John Roberson, both of whom were on the scene after the collision. Both individuals state in their affidavit that they spoke to a man representing himself as the engineer for Amtrak. They state that in response to a question concerning whether he blew the whistle before the accident, the man representing himself as the engineer stated, "No, I didn't have to blow the whistle." Both affidavits were given in February of 1997, over a year after the accident.

The defendants have submitted the recorded statements of Jenkins and Roberson taken approximately six weeks after the accident by counsel for the Gates plaintiffs. In their recorded statements, both Jenkins and Roberson state that they do not know the name of the Amtrak employee who they were talking to and neither one identifies the employee as the engineer of the train. Jenkins states, in reference to the Amtrak employee, "I don't know what his position was." Jenkins further states, in reference to the "I didn't have to blow the whistle" statement that, "I heard one of the train, one of the crew say that. I don't know which." In his recorded statement,

Jenkins describes the employee as wearing a black uniform. Jenkins does speculate that the employee was the engineer; however, Jenkins provides no reasonable basis for that assumption, as he does not know the employee's name, did not see a name tag identifying the employee's position, and does not state in his recorded statement that the employee represented himself as the engineer. Roberson, in his recorded statement, merely states that the Amtrak employee he spoke to had a beard with a reddish brown tint. Roberson does not know the employee's name, and he did not identify the employee as the engineer.

In rebuttal, the defendants assert that both the assistant engineer and the conductor did exit the train to see if they could assist the people on the ground. The defendants further assert that the engineer did not and does not wear a uniform and that he did not have a beard. The defendants also point out that the conductor and other members of the crew do wear black uniforms, and that the assistant engineer had a beard at the time.

The court finds that the plaintiffs have failed to create a genuine issue of material fact as to whether or not the train gave an appropriate audible warning as it approached the crossing. The plaintiffs do not contradict the evidence generated by the event recorder. Although the plaintiffs do not concede that the event recorder has been interpreted accurately, they do not present any evidence with which to contest the defendants' interpretation. In addition to the evidence produced by the event recorder, the defendants have submitted positive testimony of witnesses, including an independent third-party, who state that the train was blowing its whistle as it approached the crossing. The plaintiffs have failed to present any eyewitness testimony from someone who would state that they did not hear a whistle or horn blowing. Furthermore, the court finds the vague affidavit testimony of Jenkins and Roberson not to be probative of the issue. Neither one could positively identify the Amtrak employee who made the "I didn't have to

blow the whistle" statement. Additionally, although they both now state that the Amtrak employee represented himself as the engineer, Roberson never made any such assertion in his recorded statement and Jenkins specifically stated in his recorded statement that he did not know what position the employee occupied. Since the plaintiffs have failed to contest the evidence produced by the event recorder or by the eyewitnesses, and since the court finds that the affidavit testimony of Jenkins and Roberson lacks probative value, the court finds that the plaintiffs' claim concerning lack of an audible warning must fail.

CONCLUSION

For the foregoing reasons, the court finds that the plaintiffs' motion to withdraw stipulation should be denied and the defendants' motion for summary judgment should be granted. An order will issue accordingly.

THIS, the ____ day of February, 1998.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE